IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

FIRST APPEAL (ST) NO. 5411 OF 2007

IN

BCCC SUIT NO.2887 OF 1998

KASAMALI SULEIMAN MASSANI. ... APPELLANT.

VS.

MUN.CORP.OF GR.MUMBAI & ORS. ... RESPONDENTS.

MR. A.R.PANDE FOR THE APPELLANT.

MR. N.V.MORE FOR RESPONDENT NOS. 2,7,9,10,13 & 17.

MR. J.J.XAVIER FOR RESPONDENT NO.1.

Coram : S.K.Shah, J.

Date : April 10, 207.

P.C.:-

1. Heard the learned Counsel for the appellant as also the learned Counsel representing respondents.

2. The appellant to get the Appeal registered within a period of one week by paying the Court Fee stamps as per rule.

3. I have been taken to the Judgment of the Trial Court, the plaint and the written statement filed by the Respondent No. 2 and various documents and photographs of the suit premises.

4. The Suit was filed challenging the notice, issued under Section 351 of the B.M.C. Act and the Order passed thereunder, for removal of the unauthorised structure. The notice indicated the unauthorised extension of height of structure, ladi

coba, ladi roof instead of G.I. Sheets roof and loft at the structure, as shown in the sketch on the back side of the notice. There were three things unauthorised shown by this notice i.e. unauthorizedly its height was raised, slab was put and Galvanized Sheets were replaced by G.I. Sheets roof.

5. It is undisputed that the Plaintiff is in possession of the premises since September, 1989. Plaintiff had replied the notice. However, it is undisputed that he did not produce any document to show that he was authorised to put up this structure. Hence, the Order to remove the structure was passed. It is, thereafter, the Suit was filed raising various contentions. All the contentions were considered by the Trial Court and rejected them. Even before the Trial Court, no document showing authorisation of the Plaintiff to put up the aforesaid structure, were produced. The photographs were also produced before the Trial Court. The Plaintiff- Appellant admitted that these photographs are of the suit shop. Those photographs clearly indicate about raising the height of the structure, putting slab and also replacing the roof by G.I.Sheets,

6. Much was made of the earlier notice-cum-letter, issued under Section 351 of the Bombay Municipal Corporation Act and that the said notice was in respect of the same structure, as is covered by the suit notice under challenge. However, the said notice was not produced. It is undisputed that the earlier notice which was of 1987 and that was for unauthorised construction of structure and after the reply was

filed, it was regularised. What was mentioned in that letter-cum-notice was only the structure and not the structure as indicated in the Suit notice, which is about raising height, ladi-coba slab and of G.I Sheets roof. Therefore, that is all irrelevant for the purpose that the structure put up by the Plaintiff was authorised.

7. A legal point is tried to be raised that the notice under Section 351 was signed by the Deputy Municipal Commissioner but Section 351 of the B.M.C. Act required that the Commissioner should issue such a notice. It was further contended that under Section 68 of the B.M.C. Act, the Commissioner can delegate his powers but no such delegation has been produced. This stand was taken before the Trial Court and the Trial Court has rightly held that merely raising allegations in that regard is not sufficient. The Plaintiff should have given a notice to the B.M.C. to produce the delegation Order under which such notice was issued.

Therefore, it will have an effect of giving up that issue. It is also further submitted on behalf of the appellant that the Order for removal which was passed, was without considering the reply filed by the Plaintiff to the notice under Section 351 of the B.M.C. Act. However, that Order clearly indicate that no documents were produced to show that the Plaintiff was authorised to put up the structure and, therefore, the Order was passed. This cannot be said to be a mechanical Order. No documents were produced, as were called upon in the show cause notice under Section 351 of the B.M.C. Act. It was not necessary for the

Authority to go into the points raised in the reply. The notice was to show cause and no cause was shown by producing the documents. Thus, even on this point, the appeal does not deserve to be admitted.

8. Under these circumstances, no interference is called for with the Order passed by the Trial Court. There is no illegality or impropriety in the Order passed by the Trial Court, as such, the appeal deserves to be dismissed at the admission stage. Consequently, the appeal is dismissed.

9. At this stage the learned Counsel for the Appellant requests for staying the Operation of the Order for a period of eight weeks. The learned counsel for the B.M.C. strongly objects to the same saying that there is no ground at all for staying operation of this Order. In view of the above, I am not inclined to grant stay of the operation of this Order, as there is no document produced for showing authorisation of the structure of the Appellant- Plaintiff. Hence, the prayer for stay of the operation of the Order is rejected.

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[S.K.Shah, J.]